APPENDIX "A"

OPINION

4th Civil No. 6170

APPEAL from a judgment of the Superior Court of San Diego County. Bonsall Noon, Judge. Affirmed.

F. James Bear and Richards, Bartell, Rodgers & Stewart for Appellant.

J. F. DuPaul, City Attorney, and Alan M. Firestone, Chief Deputy, for Respondent The City of San Diego.

John R. Goodbody, City Attorney, for Respondent The City of Coronado.

This is an appeal from a judgment entered after demurrer to petition was sustained without leave to amend. In her original petition for Writ of Certiorari, petitioner, appellant herein, sued as a citizen and taxpayer, naming the City of San Diego and individual members of the city council as defendants. The petition was filed on December 26, 1958.

The petition alleges: The City of San Diego, a municipal corporation, has attempted to annex to the city a strip consisting of a "water corridor" in the middle of San Diego Bay, as uninhabited territory; this annexation was completed by filing the approving ordinance with the Secretary of State on September 15, 1954; the territory annexed is a strip six miles long and 600 feet wide, the entire surface of which is water area within the San Diego Bay. (Although the petition alleges the strip to be 600 feet wide, it is con-

ceded in the briefs that the strip as annexed was actually 300 feet wide.) This annexation is hereinafter referred to as the "Tidelands Annexation".

Then as uninhabited territory, defendants annexed the Western Salt Company Tract, which annexation was completed on April 25, 1955. This annexation is contiguous to the southernmost end of the Tidelands Annexation. The Western Salt Company annexation consists of about 750 acres within which is located a plant for the extraction of salt. None of the property is owned by the city of San Diego, and the city of San Diego has made no improvement within the area since the annexation. It is then alleged that the purpose of the Tidelands Annexation was to provide "fictitious contiguity" from the former boundary of the city of San Diego to the Western Salt Company Tract.

It is next alleged that petitioner and others petitioned the attorney general of the state of California for leave to sue in quo warranto to have the annexations declared invalid. The attorney general denied leave to sue on February 3, 1958. A petition for Writ of Mandate was then filed to compel the attorney general to grant leave to sue. This petition was denied by this court on April 29, 1958, and a petition for hearing in the Supreme Court was denied on June 27, 1958.

In her second cause of action, petitioner realleges the facts pertaining to the Tidelands Annexation, and then alleges that on December 18, 1956, a petition was filed with the city of Imperial Beach for the annexation of certain territory to that city. On January 15, 1957, the city council of Imperial Beach passed

a resolution approving the circulation of a petition for the annexation of this territory. On April 2, 1957, a petition signed by qualified electors within the area proposed for annexation was filed with the city, and the city council of Imperial Beach passed a resolution of intention to call a special election for annexation. On April 11, 1957, the city clerk of the city of Imperial Beach found that the signatures on the petition were insufficient. On April 18, 1957, a supplemental petition was filed and the city clerk certified the signatures on the petition and the supplemental petition to be sufficient.

On March 7, 1957, a petition was filed with the city council of the city of San Diego to annex certain territory to the city of San Diego. This annexation is hereinafter referred to as the "South Bay Annexation". On March 20, 1957, the city council of San Diego passed a resolution of intention to annex the South Bay area. Approximately one-half of the area included within the South Bay Annexation is within the area of the Imperial Beach annexation. On April 15, 1957, while the Imperial Beach annexation was still pending before the city council of Imperial Beach, the city council of San Diego passed a resolution of intention to call a special election for the annexation of the South Bay area. (Although it is not alleged in the petition, it is conceded in the briefs that in this election the voters in the South Bay area approved, by a substantial majority, the annexation of this area to the city of San Diego. It also is conceded that the Imperial Beach annexation failed because of the protests of a majority of property owners).

The petition thereafter alleges several reasons,

which are legal conclusions and argument, why the San Diego annexations are void.

The city of San Diego demurred to the petition on the ground that it did not state facts sufficient to constitute a cause of action. The demurrer was sustained, and the petitioner was given 20 days to amend. The petitioner then filed a document entitled, "An Amendment to Petition for Writ of Certiorari—Writ of Review". In this document petitioner alleged "a further and third cause of action", and named the city of Coronado and its city council as additional defendants. After realleging the facts concerning the Tidelands Annexation, the facts as alleged in the amendment to the petition are as follows: On June 25, 1954, at a special meeting of the city council of the city of Coronado, with three of the five councilmen present, a resolution was passed consenting to the withdrawal of territory from the city of Coronado. The area withdrawn was area included within the Tidelands Annexation. The resolution was passed by a 2 to 1 vote. The members of the Coronado city council did not receive written notice at least three hours before the special meeting, and they did not give their written consent to the meeting. Petitioner then alleges that she is a citizen and taxpayer within the South Bay area and that she is one of several persons subject to illegal taxes and assessments levied by the city of San Diego because of these annexations. She again alleges legal conclusions and argument as to why the annexations are void.

It should be noted that petitioner's amendment to the petition for certiorari does not in any way alter or change the original petition to which a demurrer had previously been sustained. The purported amend-

ment merely alleges a further and third cause of action.

Demurrers were filed by both the city of San Diego and the city of Coronado. Both demurrers were sustained without leave to amend and a judgment of dismissal was entered. Petitioner appeals from that judgment.

Petitioner's prime contention is that the Tidelands Annexation, being the annexation of a strip 300 feet wide and five to six miles long in the middle of San Diego Bay, is not a "strip of land" such as is required by section 35002.5 of the Government Code to make the annexed territory contiguous; that since the Tidelands Annexation is not contiguous to the city of San Diego it is therefore void. She then contends that since the only contiguity for the Western Salt Company annexation is the void Tidelands Annexation, it, too, has no contiguity to the city of San Diego and is void; and that, in turn, the contiguity depended upon for the South Bay Annexation is the Tidelands Annexation and the Western Salt Company annexation and, since they are void, there is no contiguity to the city of San Diego for the South Bay annexation and it likewise is void.

There are several other points and arguments raised in the briefs. However, in view of our decision it will not be necessary to recite them further.

The facts show that the Tidelands Annexation was completed on September 15, 1954, the Western Salt Company annexation was completed on April 25, 1955, and the South Bay Annexation was completed on September 13, 1957. (Although this latter date is not alleged in the petition, it is set forth in the pe-

titioner's statement of facts in her opening brief and is conceded.) Thus, since September 13, 1957, these annexations have been procedurally completed, the area has been included within the city of San Diego and that city has exercised municipal dominion over the area.

Under these circumstances, will a Writ of Review lie to test the validity of the annexation proceeding? No.

Where the annexation proceedings have not been completed at the time an action is commenced to test their validity, a writ of review is available to a private citizen within the area. (*Miller & Lux v. Board of Supervisors*, 189 Cal. 254; *City of Anaheim v. City of Fullerton*, 102 Cal. App. 2d 395, 401; *County of San Mateo v. City of Palo Alto*, 168 Cal. App. 2d 220.) However, where, as here, the proceedings have been completed and the city has been and is exercising dominion over the territory annexed, the territory becomes incorporated within the city and a corporation de facto is created and "none but the State can call its existence in question". (*Tulare Irrigation Dist. v. Chepard*, 185 U. S. 1; 22 Sup. Ct. Rep. 531, 536.) A private individual has no legal capacity to attack the fixing or extension of municipal limits. His sole remedy is in quo warranto. (*Coe v. City of Los Angeles*, 42 Cal. App. 479; *Crowl v. Board of Trustees*, 109 Cal. App. 214; *Keech v. Joplin*, 157 Cal. 1, 14; 13 A.L.R. 2d 1279, 1284.)

The petitioner acknowledges this to be the general rule, but contends that a prohibited or unauthorized annexation is void and being void, no corporation de facto could result and neither the passage of time nor

the exercise of municipal functions could make it valid. However, in this case there is no showing that the proceedings conducted by the City of San Diego were prohibited or unauthorized in law. To the contrary, it would appear that the city attempted to comply with the annexation statutes in all of their proceedings. The petitioner's chief complaint is directed toward the manner in which it was done. Suffice it to say that there was a colorable attempt to comply with the annexation statutes and under the authorities cited above, the petitioner's only remedy is in quo warranto. Since this has previously been denied her, she has exhausted her legal remedy.

In regard to petitioner's contention that certiorari should lie because the annexations were allegedly void, it should be pointed out that in the *Coe* case cited above, while the court held that the petitioner had no legal capacity to sue, as a citizen and taxpayer, to invalidate a municipal consolidation; nevertheless in subsequent proceedings in quo warranto the same consolidation was declared invalid by the Supreme Court. (*People v. City of Los Angeles*, 187 Cal. 56.)

In support of her contention, petitioner relies upon the case of *Brown v. City Council of Long Beach*, 258 Pac. 693. This was a decision in the district court of appeal of the second district of California. After the decision by the district court of appeal, a petition for hearing in the Supreme Court was granted. The record does not disclose what disposition was ever made of the case, but no reported decision was ever rendered by the Supreme Court. Once a hearing has been granted by the Supreme Court, the decision and opinion of the district court of appeal is a nullity and

of no effect as a precedent or authoritative statement of law. (*Knouse v. Nimocks*, 8 Cal. 2d 482; *Ponce v. Marr*, 47 Cal. 2d 159.) The *Brown* case, relied upon by petitioner, is no authority for any purpose.

While we are inclined to feel that all of the annexation proceedings were in compliance with the law, in view of the foregoing decision it will not be necessary to consider any of the other points raised on this appeal.

The motion for temporary restraining order is denied.

The judgment is affirmed.

SHEA, *J. Pro Tem.*

WE CONCUR:

SHEPARD, *Acting P. J.*

COUGLIN, *J.*

APPENDIX "B"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO

CHARLOTTE HAZELTON, et al.,

Plaintiffs,

vs.

THE CITY OF SAN DIEGO, a municipal corporation, et al.,

Defendants.

No. 230619

ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND

The above entitled matter came on for hearing before the above entitled court on March 12, 1959 . . . on Demurrer of respondent The City of Coronado to the amendment to Petition for Writ of Certiorari . . . and on the Demurrer thereto of respondent The City of San Diego . . . the court having heard oral argument and considered the premises and notice being waived in open court;

IT IS ORDERED, ADJUDGED AND DECREED that the Demurrer of respondents and each of them be, and the same are hereby sustained without leave to petitioners to amend.

Dated: Mar. 16, 1959.

BONSON NOON
Judge of the Superior Court

BONSALL NOON

APPENDIX "C"

ORDINANCE NO. 6222
(NEW SERIES)

AN ORDINANCE APPROVING THE ANNEXATION TO THE CITY OF SAN DIEGO OF CERTAIN PORTIONS OF THE TIDELANDS OF SAN DIEGO BAY, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, KNOWN AND DESIGNATED AS "SAN DIEGO HARBOR TIDELANDS."

WHEREAS, pursuant to the Annexation of Uninhabited Territory Act of 1939, as amended, the Council of The City of San Diego, being the legislative body of said City, at a regular meeting held on the 5th day of January, 1954, adopted Resolution No. 116008, by which said resolution said Council initiated proceedings for the annexaton to, incorporation and inclusion in The City of San Diego of certain uninhabited territory in the County of San Diego, State of California, consisting of all those portions of the tidelands of San Diego Bay south of said City which are at present without the boundaries of the Cities of Coronado, National City and Chula Vista, and which said lands were particularly described in said resolution; and

WHEREAS, the reason said legislative body desired such annexation are that the inclusion of said lands within The City of San Diego will enable said City to provide better governmental control of the operation of ships within San Diego Harbor, and provide uniform regulation for shipping within said San Diego Bay; and

WHEREAS, said resolution gave notice of the proposed annexation, and described the boundaries of the territory so proposed to be annexed, which said territory was designated as "San Diego Harbor Tidelands"; and said resolution provided for a hearing to be held on Tuesday, the 9th day of February, 1954, at the hour of ten o'clock A. M., in the Council Chamber in the City and County Administration Building, Civic Center, San Diego, California, at a regular meeting of the City Council of said City, at which time any person owning real property within such territory proposed to be annexed and having any objections to the proposed annexation might appear before said City Council and show cause why such territory should not be so annexed; and

WHEREAS, the City Clerk of said City caused a copy of said resolution to be published twice, but not oftener than once a week, in The San Diego Union, a newspaper of general circulation published in said City, to-wit, upon the 7th and 14th days of January, 1954, and also in The National City News, a newspaper of general circulation published outside of the City but in the County in which is located the territory proposed to be annexed, to-wit, upon the 8th and 15th days of January, 1954; and said City Clerk also caused written notice of such proposed annexation to be mailed to each person to whom land within the territory proposed to be annexed is assessed in the last equalized county assessment roll available on the date said proceedings were initiated at the address shown on said assessment roll, or as known to said Clerk, and to any person who has filed his name and address and the designation of the lands in which he has any interest, either legal or equitable, with

said Clerk, and to the Attorney General and Secretary of State of the State of California, and to the Board of Supervisors of the County of San Diego; and

WHEREAS, on the 9th day of February, 1954, at ten o'clock A. M., at a regular meeting of the City Council of said City said hearing was held, and it was found that no protests were filed against such proposed annexation; and

WHEREAS, this Council, upon the recommendation of the City Attorney, adopted Resolution No. 118700 on the 22nd day of June, 1954, wherein it was found by said Council that since the proceedings above described had been taken and had certain of said tidelands proposed to be annexed by said City have been represented as being located within the territorial boundaries of the City of Coronado, and that some of said lands so described in said proceedings have been annexed to the City of Chula Vista; and

WHEREAS, said resolution further found that the interests of The City of San Diego would be protected and better served by eliminating some of the tidelands described in the foregoing proceedings which were annexed to the City of Chula Vista and also that an application for Coronado's consent should be had for the portion of the lands which might lie within the boundaries of the City of Coronado, and further that it would be in the interests of the City to amend the description contained in said original proceedings and provide an opportunity for another hearing on the annexation of those tidelands described in said last resolution; and

WHEREAS, pursuant to said Resolution No. 118700

last described the City Clerk of said The City of San Diego caused a copy of said resolution to be published twice, but not oftener than once a week, in The San Diego Union, a newspaper of general circulation published in said City, to-wit, upon the 1st and 8th days of July, 1954, and also in the Coronado-Journal-Compass, a newspaper of general circulation published outside of the City but in the County in which is located the territory proposed to be annexed, to-wit, upon the 1st and 8th days of July, 1954; and said City Clerk also caused written notice of such proposed annexation to be mailed to each person to whom land within the territory proposed to be annexed is assessed in the last equalized county assessment roll available on the date said proceedings were initiated, at the address shown on said assessment roll, or as known to said Clerk, and to any person who has filed his name and address and the designation of the lands in which he has any interest, either legal or equitable, with said Clerk, and to the Attorney-General of the State of California, to the State Lands Commission of the Board of Public Works of said State of California, and to the Secretary of State of said State of California; and

WHEREAS, on the 3rd day of August, 1954, at ten o'clock A. M., at a regular meeting of the City Council of said city said hearing as noticed by said City Clerk was held, and it was found that no protests were filed against such proposed annexation; and

WHEREAS, on the 29th day of June, 1954, there was filed with the City Clerk of said City a certified copy of a resolution of the City Council of the City of Coronado, No. 2485, wherein said City Council

consented to the detachment from the City of Coronado of the above described tidelands lying within the boundaries of said City of Coronado and to the annexation of said lands to The City of San Diego; NOW, THEREFORE,

BE IT ORDAINED By the Council of The City of San Diego, as follows:

Section 1. The City Council of The City of San Diego hereby approves the annexation to The City of San Diego of the following described territory situated in the County of San Diego, State of California, designated as "San Diego Harbor Tidelands," to-wit:

All of the tidelands lying under the waters, including the waters, of San Diego Bay lying south of the southerly boundary of The City of San Diego and below the mean high tide line of said bay, including a portion of said tidelands lying within the corporate boundaries of the City of Coronado; the boundaries of which said territory so proposed to be annexed being more particularly described as follows:

Beginning at the point of intersection of the south boundary line of The City of San Diego with the United States Pierhead Line between Harbor Line Stations 308 and 310, as said Pierhead Line is now established for the Bay of San Diego, said point being the true point or place of beginning; thence southerly along the said United States Pierhead Line to an intersection with the northerly boundary line of the City of Chula Vista, as per Ordinance No. 488 of the City Council of the City of Chula Vista, dated February 10, 1954; thence westerly, at right

angles to the said United States Pierhead Line, along said northerly boundary line of the City of Chula Vista to an intersection with the easterly boundary line of the City of Coronado, as per Ordinance No. 832 of the City Council of the City of Coronado, dated February 20, 1951; thence southerly along said easterly boundary line of the City of Coronado to an intersection with the southerly boundary line of the City of Chula Vista, as per said Ordinance No. 488 of the City Council of the City of Chula Vista; thence easterly along said southerly boundary line of the City of Chula Vista to an intersection with the Mean High Tide Line of the Bay of San Diego, as per Miscellaneous Map No. 79, on file in the office of the County Recorder of San Diego County, California; thence southerly and westerly along said Mean High Tide Line to an intersection with the said easterly boundary line of the City of Coronado; thence northerly along said easterly boundary line of the City of Coronado to a point 600 feet southerly from the said southerly boundary line of the City of Chula Vista; thence westerly at right angles to said easterly boundary line of the City of Coronado to an intersection with a line parallel to and distant 600 feet westerly from the said easterly boundary line of the City of Coronado; thence northerly and westerly along said 600-foot parallel line to an intersection with the said south boundary line of The City of San Diego; thence easterly along said south boundary line of The City of San Diego to the point or place of beginning.

Section 2. That the City Clerk of said City be, and he is hereby authorized and directed to file a certified copy of this ordinance in the office of the

Secretary of State of the State of California, giving the date of its passage; and from and after the date of the filing of said document in the office of said Secretary of State the annexation of such territory so proposed to be annexed and described herein shall be deemed to be and shall be complete, and thenceforth such annexed territory shall be, to all intents and purposes, a part of The City of San Diego.

Section 3. That the City Clerk be, and he is hereby further authorized and directed to file in the office of the Recorder of the County of San Diego an affidavit stating that all requirements of the laws pertaining to the proceedings for annexation of the territory hereinabove in Section 1 described have been complied with, which said affidavit shall be accompanied by a certified copy of the boundary description as set forth in said proceedings and also by a map delineating such boundary, as required by Sections 34080 and 34081 of the Government Code of the State of California; and he is further directed to file on or before the first day of February, 1955, with the County Assessor whose assessment roll is used for the tax levy, and with the State Board of Equalization, a statement of the change of boundaries of The City of San Diego, setting forth the legal description of the boundaries of the City changed, together with a map or plat indicating the boundaries, as required by Sections 54900, 54901, 54902 and 54903 of said Government Code.

Section 4. That the City Clerk of said City be, and he is further hereby directed to cause this ordinance to be published once in the official newspaper of said City, to-wit, The San Diego Union.

Section 5. This ordinance shall take effect and be in force on the thirty-first day from and after its passage.

Passed and adopted by the Council of the City of San Diego, California, this 10th day of August, 1954, by the following vote, to-wit:

YEAS—Councilmen: Burgener, Wincote, Dail, Godfrey.

NAYS—Councilmen: None.

ABSENT—Councilmen: Schneider, Kerrigan, Mayor Butler.

JOHN D. BUTLER,
Mayor of The City
of San Diego, California.

(SEAL)

FRED W. SICK,
City Clerk of The City of
San Diego, California
By HELEN M. WILLIG, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until six calendar days had elapsed between the day of its introduction and the day of its final passage, to-wit, on the 3rd day of August, 1954, and on the 10th day of August, 1954.

I FURTHER CERTIFY that the reading of said ordinance in full prior to its final passage was dispensed with by a vote of not less than four members of the Council, and that there was available for the

consideration of each member of the Council prior to the day of its final passage a written or printed copy of said ordinance.

FRED W. SICK,
City Clerk of the City
of San Diego, California.

(Seal)

By HELEN M. WILLIG,
Deputy

8/19

APPENDIX "D"

RESOLUTION No. 115920

WHEREAS, this Council is advised that a petition has been presented to the City Clerk for consideration by this body, signed by property owners residing in the South Bay area of this County, requesting the initiation of proceedings for the annexation to The City of San Diego of all the area of the Bay of San Diego at present situated outside of the territorial boundaries of the Cities of Chula Vista, National City and Coronado; and

WHEREAS, this Council is advised by the representatives of the State Legislature Interim Committee recently appointed for the purpose of recommending plans for the development of the Harbor of San Diego that it would be in the interest of such development and would facilitate the probabilities of the Legislature assisting in the development of said harbor by having the San Diego Bay tidelands annexed to The City of San Diego so that there would be no problem in the development of said bay involving territory outside of the corporate boundaries of the four cities now interested in the development of the harbor; and

WHEREAS, this Council is of the opinion that it would be in the interests of said City to follow said recommendation and institute proceedings for the annexation to The City of San Diego of all of the unincorporated territory situated within the Bay of San Diego; NOW, THEREFORE,

BE IT RESOLVED By the Council of The City of San Diego as follows:

That this Council approves in principle the annexation to the City of San Diego of all of the unincorporated area of the Bay of San Diego, and herein and hereby directs the City Manager and City Attorney to institute the necessary proceedings which will result in the incorporation of said unincorporated area of the bay as a part of The City of San Diego.

I hereby certify that the above and foregoing is a full, true and correct copy of Resolution No. 115920 of the City of San Diego, California, passed and adopted by the Council of said City Dec. 23, 1953.

PHILLIP ACKER, City Clerk
By Sara M. Harrison, Deputy

APPENDIX "E"

OFFICE OF THE ATTORNEY GENERAL
State of California

EDMUND G. BROWN
Attorney General

OPINION
of
EDMUND G. BROWN
Attorney General

Eugene B. Jacobs
Deputy Attorney General

No. 57 154
FEBRUARY 3, 1958

WILLIAM F. HOUSE, CHARLOTTE HAZELTON, and the CITY OF IMPERIAL BEACH, through their attorney, John F. O'Laughlin, and the CITY OF CHULA VISTA, through its attorney, Meredith Campbell, requested this office to grant leave to sue the City of San Diego, the Mayor of the City of San Diego, and City Councilmen of the City of San Diego, in quo warranto, to determine the right of the City of San Diego, pursuant to three annexations, to exercise jurisdiction and control over three territories designated as the San Diego Harbor Tidelands Annexation, the Western Salt Company Tract, and the South Bay Annexation.

Our conclusions may be sumarized as follows:

Leave to sue is denied since it appears the three

annexation proceedings were legally proper and, moreover, the application for leave to sue was not filed until almost three years after the completion of the annexation of the San Diego Harbor Tidelands Annexation and over two years after completion of the Western Salt Company Tract.

ANALYSIS

Summary of the Material Facts

The issues here presented involve at least ten city annexations and one incorporation of a city. A complete statement of facts is necessary for an understanding of the problems here involved.

San Diego Harbor Tidelands Annexation

On December 15, 1953, thirteen property owners and residents in unincorporated territory south of the cities of San Diego, National City, and Chula Vista, and also south of San Diego Bay, petitioned the City Council of the City of San Diego to take the necessary steps to annex the unincorporated portions of San Diego Bay not included within the Cities of Coronado, National City and Chula Vista. The petition stated that the reason for the request was to provide a means of annexation to the City of San Diego of the territory south of the City of Chula Vista and north of the border of Mexico. The petition stated that the territory needed water and sanitation facilities for the health and welfare of the people, and that an annexation of the unincorporated portion of the bay would speed development of the harbor. These petitioners stated that they would seek annexation of

their area to the City of San Diego if the link down San Diego Bay could be established.

On December 22, 1953, the City of San Diego, pursuant to *Government Code* section 35310 of the Annexation of Uninhabited Territories Act of 1939 (Govt. Code §§ 35000-35011, 35300-35326), on its own motion initiated an annexation designated as San Diego Harbor Tidelands Annexation.* Subsequently, on September 15, 1954, that annexation was completed by the filing of the annnexation ordinance by the Secretary of State (*Govt. Code* § 35318). The majority of the territory in this annexation consisted of a strip over the waters of San Diego Bay of approximately five miles, with one end of the strip contiguous to the then existing boundaries of the City of San Diego for the distance of almost one mile and the other end of the strip fanning out and including some tidelands bordering on the shores of the San Diego Bay, south of the City of San Diego. The water strip passed between the City of Coronado and the Cities of National City and Chula Vista. The first two and one-third miles of the strip was, on the average, one-third of a mile wide. The remaining portion of two and two-third miles strip was 600 feet wide. The fan at the southern end of the strip was approximately a triangle with two sides about one mile in length and the remaining side about one and two-thirds miles. All of the territory in this annexation was and is owned by the State Lands Commission of the State of California and that Commission was given proper notice of the application. No protest to

* Since the petition was not filed by landowners in the territory to be first annexed, the City of San Diego could not proceed on the annexation based on the petition.

this annexation was filed by the State Lands Commission. No persons resided, inhabited, or lived in this territory.

Except for the action discussed under the heading "Chula Vista Industrial Lands Tract No. 2", no legal action was taken seeking to attack the validity of the San Diego Harbor Tidelands Annexation until August 5, 1957, when an application for leave to sue in quo warranto was filed with this office. It has been conceded by the applicants that the procedural aspects of this annexation were proper.

At approximately the same time as the initiation of the San Diego Harbor Tidelands Annexation by the City of San Diego, the Cities of Chula Vista and National City each commenced annexations of a portion of San Diego Bay, also pursuant to the Annexation of Uninhabited Territories Act of 1939 (*Govt. Code* §§ 35000-35011, 35300-35326). The territory in the annexations by Chula Vista and National City overlapped to some extent with the territory included in the San Diego Harbor Tidelands Annexation.

While these annexations were pending, and in order to resolve the problem of overlapping territory, several conferences were held among and between officials of the Cities of San Diego, National City, Chula Vista, and Coronado, as well as with United States Navy Department and Chamber of Commerce officials and members and employees of the San Diego County Boundary Commission. At a meeting held February 4, 1954 presided over by a member of the San Diego County Boundary Commission, the representatives of the four cities involved agreed that each of the Cities of San Diego, Chula Vista, and National

City, should proceed with its proposed annexation of San Diego Bay tidelands, but that before the second hearings or the adoption of ordinances relating to those annexations the representatives of all four cities would meet together and decide upon definite amended boundaries for their various annexations which would be fair and satisfactory to all four cities and which would provide the City of San Diego with a corridor to the area south of San Diego Bay.

Ultimately the City of Coronado consented to a portion of that city being included in the water corridor that the City of San Diego included in the San Diego Harbor Tidelands Annexation. The City of San Diego completed the San Diego Harbor Tidelands Annexation on September 14, 1954 and the City of Chula Vista completed its annexation of a portion of San Diego Bay at about the same time. Pursuant to a request by the City Council of the City of National City, the City of San Diego, through its City Council under *Government Code* section 35304 on January 25, 1955 consented to the detachment from the City of San Diego of over one-half of the territory which had been included previously in the San Diego Harbor Tidelands Annexation. Subsequent to this consent for detachment by the City of San Diego, the City of National City annexed the detached portion of the San Diego Harbor Tidelands Annexation. The detachment by the City of San Diego and the annexation by the City of National City left each city with a fan-shaped beachhead at the southern end of San Diego Bay connected to each city by strips of 300 feet in width. The City of San Diego strip then was about five miles long and 300 feet wide and the National

City strip was about two and two-thirds miles long and 300 feet wide.

San Diego Western Salt Company Tract Annexation

On December 8, 1954, the Western Salt Company filed a petition with the City of San Diego pursuant to the Annexation of Unincorporated Territories Act of 1939 seeking annexation to the City of San Diego of territory designated as the Western Salt Company Tract, which territory was and is owned entirely by the Western Salt Company. Subsequently, on April 25, 1955 this annexation was completed by the filing of the annexation ordinance by the Secretary of State (*Govt. Code* § 35318). The territory in this annexation depends for contiguity solely on the San Diego Harbor Tidelands Annexation and is contiguous to the so-called water corridor annexation for the entire length of the beachhead, extending from the boundary of the City of Chula Vista on the north to the present boundary of the City of Imperial Beach on the south. The territory in the Western Salt Company Tract was of relatively uniform shape and did not depend upon a strip for contiguity to the territory of the San Diego Harbor Tidelands Annexation. The sole owner of the Western Salt Company Tract did not file a protest to this annexation, but on the contrary was the petitioning landowner who initiated the annexation proceedings. No persons resided, inhabited, or lived in this territory.

Except for the action discussed under the heading "Chula Vista Industrial Lands Tract No. 2", no legal action was taken seeking to attack the validity of the annexation of the Western Salt Company Tract until August 5, 1957 when an application for leave to sue

in quo warranto was filed herein. It has been conceded by the applicants that the procedural aspects of this annexation were proper.

Incorporation of the City of Imperial Beach

Subsequent to the completion of the San Diego Harbor Tidelands Annexation and the annexation of the Western Salt Company Tract, the incorporation of the City of Imperial Beach was completed on July 18, 1956. The boundaries of this city extended from the southern boundary of the City of Coronado and the southwestern boundary of the Western Salt Company Tract to the border of Mexico, and from the Pacific Ocean inland about two miles.

Chula Vista Industrial Lands Tract No. 1

In January, 1957 the City of Chula Vista pursuant to Annexation Act of 1913 (*Govt. Code* §§ 35000-35011, 35100-35158) commenced an annexation of territory designated as Industrial Lands Tract No. 1. This territory was located east of the northern portion of the Western Salt Company Tract and south of the City of Chula Vista. Industrial Lands Tract No. 1 was contiguous to the City of Chula Vista for a distance of about one-third of a mile, was of uniform shape, and did not contain any strips of territory. At the protest hearing on this annexation sufficient landowners protested so that no further proceedings were, or properly could have been taken; therefore, this annexation was never completed.

Imperial Beach Annexation

During December, 1956, the City of Imperial Beach commenced proceedings pursuant to the Annexation Act of 1913 (*Govt. Code* §§ 35000-35011, 35100-35158)

seeking to annex certain territory. On January 15, 1957 the City Council of the City of Imperial Beach adopted a resolution acknowledging the receipt from the proponents of a notice of intention to circulate a petition relating to that annexation. The resolution also approved the circulation of such a petition. The fiftieth day after the adoption of the resolution was March 6, 1957. On April 2, 1957 the petition was filed with the City Council of the City of Imperial Beach and on the same day that City Council adopted a resolution of intention to call a special election to submit the question of annexation to the electors residing in the territory. However, on April 11, 1957 the city clerk of that city found the signatures insufficient. On April 18, 1957 a supplemental petition was filed and thereafter on April 18, 1957 the City Clerk of the City of Imperial Beach certified the signatures to be sufficient. On May 7, 1957 a protest hearing was held, and continued to July 2, 1957. Sufficient landowners protested so that no further proceedings were, or properly could have been taken; therefore, that annexation was never completed and a resolution thereafter was adopted acknowledging defeat of the annexation.

The territory involved in this proceeding consisted of territory of approximately eleven square miles, which would have more than doubled the area of Imperial Beach. This territory was located to the east of Imperial Beach, to the south and east of the Western Salt Company Tract, and south of the territory sought to be annexed by the City of Chula Vista (Industrial Lands Tract No. 1). If the Imperial Beach and Chula Vista annexations had been completed the

City of San Diego would have been unable to annex any farther based on the Western Salt Company Tract since that tract would have been cut off from the unincorporated area in the so-called South Bay area.

Chula Vista Industrial Lands Tract No. 2

Subsequent to March 6, 1957 the City of Chula Vista pursuant to the Annexation Act of 1913 (*Govt. Code* §§ 35000-35011, 35100-35158) commenced a proceeding for annexation of territory designated as the Industrial Lands Tract No. 2. The territory in that proceeding extended from the City of Chula Vista to the City of Imperial Beach bordering on and touching the southern and eastern boundaries of the Western Salt Company Tract for most of its length and thereby would have cut off the City of San Diego from further annexations into the South Bay area. In late spring and early summer of 1957 the City of Chula Vista instituted an action in the Superior Court in San Diego County to contest the validity of the South Bay Annexation of the City of San Diego. The court in that case issued judgment that the Chula Vista annexation designated as Industrial Lands Tract No. 2 was void for lack of contiguity, and permitted the South Bay Annexation of the City of San Diego to be completed. The court there also ruled that since the San Diego Harbor Tidelands Annexation and the Western Salt Company annexation had been completed, those annexations could only be challenged by a suit in quo warranto.

San Diego South Bay Annexation

On March 7, 1957 proceedings were commenced by the City of San Diego for annexation under the An-

nexation Act of 1913 (*Govt. Code* §§ 35000-35011, 35100-35158) of territory designated as the South Bay Annexation. Prior to March 20, 1957 a sufficient petition was filed with the City of San Diego. On March 20, 1957 the City Council of the City of San Diego enacted a resolution of intention to call an election to submit the question of annexation to the electors residing in the territory. Thereafter a protest hearing was held and it was found that a majority protest had not been made since not a single protest had been filed. Thereafter a special election on the question of the South Bay Annexation was held on July 16, 1957 and the electors voted in favor of the annexation, 821 yes votes to 585 no votes. The annexation was completed by the filing of the annexation ordinance by the Secretary of State on September 13, 1957.

The territory in the South Bay Annexation was south and east of the Western Salt Company Tract and contiguous thereto. The territory extended from the Western Salt Company Tract to the border of Mexico and consisted of about twenty square miles. It was of uniform shape and did not include any strips of territory. Except for possible conflicts with the Imperial Beach Annexation the applicant concedes that the procedural aspect of the South Bay Annexation was proper.

On December 12, 1957 by telephone an informal request was made to this Office by the City of Imperial Beach for provisional leave to sue the City of San Diego in quo warranto to test the validity of San Diego's South Bay Annexation. The request was made pursuant to section 10, of Title 11 of the *California*

Administrative Code in order to avoid the running of the statute of limitations. On December 12, 1957, the City of Imperial Beach without authorization filed a complaint in the name of the State of California. They have already been directed to dismiss that complaint. On December 13, 1957 this Office issued provisional leave to sue and signed a complaint in quo warranto which was placed on file on December 13, 1957 by the City of Imperial Beach. The sole basis for the complaint was whether in light of the pending Imperial Beach Annexation, the San Diego South Bay Annexation was properly commenced. The City of Imperial Beach was permitted to have the summons issued, but was precluded from further action until and unless this Office should grant leave to sue after consideration of the formal application of Imperial Beach. The City of Imperial Beach was requested to file its formal application within a few days of December 13, 1957. On January 28, 1958, a formal application for leave to sue the City of San Diego to test the validity of the South Bay Annexation was filed with this office by the City of Imperial Beach.

Relators

The relators in the application regarding the validity of the San Diego Harbor Tidelands Annexation and the annexation of the Western Salt Company Tract are the City of Imperial Beach, the City of Chula Vista, William F. House, and Charlotte Hazelton. The City of Imperial Beach was not in existence at the time of the completion of either of these annexations. William F. House and Charlotte Hazelton were residents of the territory later included in the South Bay Annexation, but were not residents of the

territory included in the San Diego Harbor Tidelands Annexation or the Western Salt Company Tract. The only relator in the formal application and on the complaint concerning the South Bay Annexation is the City of Imperial Beach.

Services Supplied to the Western Salt Company Tract by the City of San Diego

Since the completion of the annexation by the City of San Diego of the Western Salt Company Tract, the Planning Department of the City of San Diego has laid out a zone plan for the area and has zoned the property in the area; the Fire Department of the City of San Diego has made periodic fire inspections of the area and of the structures within the area; the Department of Building Inspection of the City of San Diego has issued permits for building construction in the area and has caused such construction to be inspected; the Police Department of the City of San Diego has answered numerous police calls within the area and has conducted investigations of crimes committed therein; the California Water and Telephone Company has supplied water to the area under contract with the City of San Diego and the City of San Diego is required to compensate that company for any water so supplied; the City of San Diego has paid an assessment on the area to the Metropolitan Water District of Southern California; the Engineering Department of the City of San Diego has conducted surveys of the area for the purpose of locating roads and other improvements within the area and for the purpose of planning the future installation and construction of public improvements therein.

ISSUES PRESENTED

The documents filed by the relators and the proposed defendants present a number of issues which should be discussed.

1. *Are the three annexations of the City of San Diego invalid because the first annexation provided no contiguity for the three annexations to the City of San Diego?*

It is contended by the applicants that the San Diego Harbor Tidelands Annexation is invalid because it is not contiguous to the City of San Diego. If the applicants are correct then it would follow that the Western Salt Company Tract Annexation and the South Bay annexation would also be invalid for lack of contiguity since the only connection or possible contiguity would be through the San Diego Harbor Tidelands Annexation.

Is the San Diego Harbor Tidelands Annexation contiguous to the City of San Diego? It is our conclusion that it is.

That annexation was completed pursuant to the Annexation of Uninhabited Territory Act of 1939, commonly referred to as the Uninhabited Annexation Act (*Govt. Code* §§ 35000-35011; 35300-35326). That act requires that the territory to be annexed shall be contiguous to the annexing city (*People v. Town of Corte Madera*, 115 Cal. App.2d 32, 41). Regarding contiguity the Uninhabited Annexation Acts states:

> "To qualify for annexation, new territory shall be contiguous to: (a) The city, or (b) Contiguous territory where the electors have voted for annexation to the city" (*Govt. Code* § 35104).

The annexation statutes do not define the term "contiguous", although some requirements, limits on, and exemptions from the requisite contiguity do exist (*Govt. Code* §§ 35002.5, 35003, 35105, 35105.5 35158, 35200, 35201.5, 35302, 35304.5, 35326, and 35450).

The most recent as well as informative case as to the meaning of the word "contiguous" is *Rafferty v. Covina*, 133 Cal. App.2d 745. Therein the court stated at pages 752-753:

> "Before the adoption of section 35002.5 any contiguity to the city of the area to be annexed was sufficient. By the amendment [adding *Government Code* section 35002.5] the Legislature has stated what is not contiguity. It has not stated what *is* contiguity, except by the statement of what is deemed not to be contiguity. Therefore, in order to determine what is contiguity the same test is applied as was applied prior to the adoption of that section, except it must be tested further to determine whether it falls within the prohibition. Contiguity exists where boundary lines are coterminous (*City of Burlingame v. County of San Mateo, supra*)."

In *City of Burlingame v. County of San Mateo*, 90 Cal. App.2d 705, the Court stated:

> "Contiguity does not depend on the extent of the property annexed . . ." (p. 709).
>
> "The only limitation imposed by the statute in our case is that the annexed property must be contiguous to Burlingame. The 'horseshoe strip', as respondent calls it, is contiguous to, i.e., has a common boundary with, Burlingame for an aggregate distance of 200 feet" (p. 710).

The very minimum requirement for contiguity is that the city and the territory being annexed should touch (see, *People v. Town of Corte Madera*, 97 Cal. App.2d 726, 732.) In California touching at a mere point probably is not sufficient (see *People v. City of Lemoore*, 37 Cal. App. 79, 85).

There is no doubt that the territory annexed in the San Diego Harbor Tidelands Annexation was contiguous to the City of San Diego. The two touched and had a common boundry. To phrase it differently, their boundary lines were coterminous for almost a mile at the northern-most portion of the strip.

It has been contended by applicants, however, that since the strip passes over water contiguity is precluded. There is nothing in any of the annexation acts which indicates water areas may not be annexed. Historically, and at this time, many cities in California have included water areas in their boundaries. Much of San Francisco Bay and many islands therein have been included in such cities as San Francisco, Oakland, Berkeley, and Richmond. Some cities have annexed or have included in their original incorporation boundaries portions of the ocean, including offshore islands.

The annexation statutes generally refer to "territory", not land (*Govt. Code* §§ 35104 and 35302; but see §§ 35002.5, 35121, and 35313). It would seem that territory refers to area generally not just to dry land. Any other interpretation would require that all lakes, rivers, and bays included within California cities since the creation of this State should be considered as unincorporated territory. Moreover, the Government Code sections concerning county crea-

tion and county boundary alteration also refer to "territory" (*Govt. Code* §§ 23304 and 23207 (d)). Thus if "territory" is not interpreted to include both water and land areas, the absurdity of all water area in California being neither incorporated or unincorporated would result.

It is significant to note that an examination of the maps accompanying the application and the reply of the City of San Diego reveal that most of San Diego Bay is now included in one city or another. Even one of the relators herein, the City of Chula Vista, includes within its boundaries a large portion of San Diego Bay.

Since water areas may be included within the territory annexed by a city, should a treatment be given to water strips which differs from the manner the courts have approached land strips? Apparently not.

The courts have made it clear for many years that questions of population, size, form, extent, nature, and character of the territory to be included within a city have been left to the State Legislature, the people in the territory being annexed or incorporated, and the municipality involved (*People v. City of Los Angeles*, 154 Cal. 220, 224, 226; *City of Burlingame v. County of San Mateo*, 90 Cal. App.2d 705, 709; *People v. Town of Loyalton*, 147 Cal. 774, 778; *People v. Town of Corte Madera*, 115 Cal. App2d 32, 45-47). Such questions are held by those cases to be political and not judicial.

The courts have repeatedly emphasized that if the existing laws are complied with and no substantial provision of law has been violated, and if there is no limitation in the statute, the courts will not apply re-

strictions in the absence of fraud (*People v. City of Los Angeles*, 154 Cal. 220, 224, 228; *Johnson v. City of San Pablo*, 132 Cal. App.2d 447, 457; *City of Burlingame v. County of San Mateo*, 90 Cal. App.2d 705, 709-711).

As stated by the court in *Rafferty v. City of Covina*, 133 Cal. App.2d 745 at page 753:

> "The court's function in the premises is to interpret the rules laid down by the Legislature, not to make new or additional rules."

The only limitations controlling the nature and size of strips of territory to be annexed here are in *Government Code* sections 35002.5 and 35326.

Section 35002.5 reads in part:

> "Territory shall not be deemed contiguous as the word 'contiguous' is used in this chapter if the only contiguity is based on a strip of land over 300 feet long and less than 200 feet wide, such width to be exclusive of highways."

It is apparent that this limitation was added to the code to control to some extent the narrow strip annexations which were discussed in such cases as *City of Burlingame v. County of San Mateo*, 90 Cal. App.2d 705; *City of Anaheim v. City of Fullerton*, 102 Cal. App.2d 395; *Rafferty v. City of Covina*, 133 Cal. App.2d 745.

Section 35326 reads:

> "Territory shall not be annexed to a city pursuant to this article if, as a result of such annexation unincorporated territory is completely surrounded by such city."

This section precludes protective "horseshoe strips"

such as the one which was used in *City of Burlingame v. County of San Mateo*, 90 Cal. App.2d 705.

The cases before and since the addition of sections 35002.5 and 35326 have never questioned the practices of the cities in gerrymandering except with regard to the existence of fraud (see, *City of Anaheim v. City of Fullerton*, 102 Cal. App.2d 395).

Narrow strips over land have been approved by the courts (*People v. City of Los Angeles*, 154 Cal. 220; *City of Burlingame v. County of San Mateo*, 90 Cal. App.2d 705; *People v. Town of Corte Madera*, 115 Cal. App.2d 32; *Rafferty v. City of Covina*, 133 Cal. App.2d 745). The water strip is over 300 feet long, but it also is more than 200 feet wide; therefore, section 35002.5 appears to place no limit on the water strip annexation. The City of San Diego did not completely encircle unincorporated area with the water strip annexation; thus section 35326 is not applicable.

Applicants suggest that a water strip is improper because the city has no access to the land area annexed without crossing into another city or into unincorporated area. There appears to be no requirement in the code that access should be available even as to land annexations. In fact, the Legislature in some instances permits annexations without contiguity and thus without access (*Govt. Code* §§ 35002.5 (second paragraph); 35201.5). It is clear that there is no inherent, constitutional, or statutory requirement that in all instances there shall be contiguity or access, although there is an apparent desire by the Legislature for access in street strip annexations (*Govt. Code* §§ 35105.5 and 35304.5; see also, *City of Burlingame*

v. County of San Mateo, 90 Cal. App2d 705, 709).

The courts approved an extreme annexation in the *Burlingame* case, where there was no municipal purpose to be served other than cutting off another city. The water strip annexation here involved had as its ultimate purpose the providing of municipal services for residential, commercial, and industrial areas where the property-owners and the voters were amenable to and desired such annexation. Thus, it is a more justifiable action by a city than was the Burlingame annexation.

It is our conclusion that the San Diego Harbor Tidelands Annexation would, on all the facts involved, probably be held valid. Thus, it also follows that insofar as contiguity is concerned the Western Salt Company Tract Annexation and the South Bay Annexation are also valid. No other issues concerning the validity of the Western Salt Company Tract Annexation have been presented to us, therefore there is no question as to its validity.

In addition to the issues of law discussed above there is the passage of time and other matters of public interest which justify the denial of leave to sue. These are discussed below.

2. *In light of the passage of three years and two years, respectively, before application was made for leave to sue in quo warranto, would it be in the public interest to permit litigation concerning the validity of the first and second annexations of the City of San Diego?*

Even if there had been some flaw in the San Diego Harbor Tidelands Annexation or the Western Salt Company Tract Annexation we would deny leave to

sue because of the passage of three years as to the first and two years as to the second annexation after their completion before application was made to this office. We conclude that the delay was unduly long.

Moreover, *Code of Civil Procedure* section 349½ provides:

> "The validity of any proceedings for the annexation of territory to a municipal corporation . . . shall not be contested in any action unless such action shall have been brought within three months after the completion of such proceedings . . ."

This section has been held to apply to the State and its quo warranto actions (*People v. City of Los Angeles*, 93 Cal App. 532, 538; see also, *People v. Town of Corte Madera*, 115 Cal. App.2d 32).

In regard to the application of this code section, the Court in *People v. Town of Corte Madera*, *supra*, at page 40 stated:

> ". . . A curative statute may operate to cure any procedural irregularity—*even one going to jurisdiction*—but it cannot operate to breathe life into a proceeding, the very filing of which is prohibited by statute . . ." (emphasis added)

From that case it appears that *Code of Civil Procedure* section 349½ would probably cure any possible defect in contiguity in regard to the San Diego Harbor Tidelands Annexation. Particularly is this true after the passage of three years. The *Corte Madera* case, *supra*, and one of the problems involved in 27 *Ops. Cal. Atty. Gen.* 244, 247-248, presented unique circumstances where application of *Code of Civil Procedure* section 349½ would have frustrated

the annexation statutes. If the present case had involved an annexation where the territory annexed was located many miles from the annexing city with absolutely no connecting link, there is doubt whether *Code of Civil Procedure* section 349½ would be held to cure the lack of contiguity (see, 27 *Ops. Cal. Atty. Gen.* 244). But we do not have those circumstances here.

Moreover, as indicated in the statement of facts, the City of San Diego has provided many municipal services in the meantime, and it would not be in the public interest to upset their exercise of jurisdiction at this late date.

Also since the completion of the first two San Diego annexations the Legislature has in each session enacted validating acts which might be applicable to the present annexations. While the nature of the defects cured by such acts is not clear (28 *Ops. Cal. Atty. Gen.* 369, 372-373), we mention these acts for whatever application they may have.

3. *Since the property owners and the electors have approved the annexations by the City of San Diego and on the other hand have precluded annexation by the Cities of Chula Vista and Imperial Beach, is it in the public interest to grant leave to sue the City of San Diego in quo warranto to test the validity of their annexations?*

An examination of the many competing annexations involved herein requires a conclusion that the solid majority of the landowners and the electors in the territories annexed by the City of San Diego did not wish to become part of either Imperial Beach or Chula Vista, but did wish to join San Diego. In fact

not a single protest was filed against any one of the three San Diego annexations, and a solid majority of the electors voted in favor of the South Bay Annexation. On the other hand, every annexation attempted by Imperial Beach and Chula Vista has been stopped by protests of the property owners.

The cases make it clear that the efficacy of annexations is a decision for the city annexing and the inhabitants and property owners of the territory to be annexed (*People v. City of Los Angeles*, 154 Cal. 220, 224-226, 227). It would not be in the public interest to grant leave to sue and thereby prolong a competition between cities which is obviously not favored by those in the territory involved. The desire for expansion by bordering cities and the fact that such expansion may be precluded is not sufficient reason to invalidate an annexation (see, *People v. City of Los Angeles*, 154 Cal. 220, 227; *City of Burlingame v. County of San Mateo*, 90 Cal. App.2d 705, 709-711).

4. *Did the City of Imperial Beach through its annexation acquire sufficient jurisdiction of the territory to preclude the commencement and completion of the South Bay Annexation by the City of San Diego, and therefore, render the South Bay Annexation invalid?*

By telephone we were informed by the attorney for City of Imperial Beach that the City of San Diego had improperly commenced the South Bay Annexation within 50 days of the key date concerning the commencement of the Imperial Beach Annexation.

It is clear the City of San Diego commenced the South Bay Annexation after the 50 day period pro-

vided by *Government Code* section 35113 and thus was not in conflict with the City of Imperial Beach (*Govt. Code* § 35113). The facts before us also indicate that the sufficient petition received by San Diego after the expiration of the Imperial Beach 50 day period and before receipt of a sufficient petition by the City of Imperial Beach gave jurisdiction to the City of San Diego and precluded any further action by the City of Imperial Beach (*Govt. Code* § 35115). Moreover, the Imperial Beach Annexation failed because of the protests of the property owners.

In light of the record before this office, granting leave to sue to test the validity of the South Bay Annexation would not be in the public interest.

CONCLUSION

Leave to sue is denied as to all three of the San Diego Annexations. Provisional leave to sue heretofore granted pursuant to the provisions of section 10, Title 11 of the *California Administrative Code* concerning the South Bay Annexation is hereby withdrawn. Applicant, City of Imperial Beach, is directed to dismiss the complaint filed December 13, 1957 in San Diego County.

APPENDIX "F"

STATUTES OF CALIFORNIA — 32ND SESSION — 1897, CHAP. LXXXI, AN ACT RELINQUISHING TO THE UNITED STATES OF AMERICA THE TITLE OF THIS STATE TO CERTAIN LANDS. (APPROVED MARCH 9, 1897)

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Sec. 1. All the right and title of the State of California in and to the parcels of land extending from high-water mark out to three hundred yards beyond low-water mark, lying adjacent and contiguous to such lands of the United States in this State as lie upon tidal waters and are held, occupied, or reserved for military purposes or defense, lying adjacent and contiguous to any island, the title to which is in the United States, or which island is reserved by the United States for any military or naval purposes or for defense, are hereby granted, released, and ceded to the United States of America; the boundaries of each parcel of land hereby granted, released, and ceded to the United States of America; the boundaries of each parcel of land hereby granted, released, and ceded to the United States to be a line along high-water mark, a line three hundred yards out beyond low-water mark; PROVIDED, that the title to each parcel of land hereby granted, released and ceded to the United States shall be, and remain, in the United States only so long as the United States shall continue to hold and own the adjacent lands now belonging to the United States: AND PROVIDED FURTHER, that this state reserved the right to serve and execute

on said lands all civil process, not incompatible with this cession, and such criminal process as may lawfully issue under the authority of this State against any person or persons charged with crimes committed without said lands.

Sec. 2. This Act shall take effect immediately.

STATUTES OF CALIFORNIA — 32ND SESSION — 1897, CHAPT. LVI, AN ACT CEDING TO THE UNITED STATES OF AMERICA JURISDICTION OVER ALL LANDS WITHIN THIS STATE WHICH HAVE BEEN OR MAY HEREAFTER BE ACQUIRED BY THE UNITED STATES FOR MILITARY PURPOSES. (APPROVED MARCH 2, 1897)

The People of the State of California, represented in Senate and Assembly, do enact as follows;

Sec. 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands within this State now held, occupied, or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes; PROVIDED, that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated; AND PROVIDED FURTHER, that this State reserves the right to serve and execute on said lands all civil process, not incompatible with this cession, and such criminal process as may lawfully issue under the authority of this State against any person or persons charged with crimes committed without said lands.

Sec. 2. This Act shall take effect immediately.